

APR 21 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KULDIP RAY,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 05-72447

Agency No. A076-231-483

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 13, 2009**

Before: GRABER, GOULD, and BEA, Circuit Judges.

Kuldip Ray, a native and citizen of India, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for asylum, withholding of removal, and

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

protection under the Convention Against Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. Reviewing for substantial evidence, *Chebchoub v. INS*, 257 F.3d 1038, 1042 (9th Cir. 2001), we deny in part and dismiss in part the petition for review.

Substantial evidence supports the IJ’s adverse credibility finding based on Ray’s submission of fraudulent documents and an inconsistency within his testimony regarding matters at the heart of his claim. *See Desta v. Ashcroft*, 365 F.3d 741, 745 (9th Cir. 2004). Further, the record does not support Ray’s contention that the IJ improperly evaluated the evidence. Accordingly, Ray failed to establish eligibility for asylum or withholding of removal. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

We lack jurisdiction to review Ray’s contention that the IJ did not give him a second opportunity to secure and present corroborating evidence because he failed to exhaust this claim before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

Because Ray’s CAT claim is based on the same evidence that the IJ found not credible, and Ray points to no other evidence that the IJ should have considered, he failed to show he qualified for CAT protection. *See Farah*, 348 F.3d at 1157.

Finally, the agency's finding that Ray filed a frivolous asylum application was appropriate. *See Ahir v. Mukasey*, 527 F.3d 912, 917-19 (9th Cir. 2008).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.